DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	
Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers	CC Docket No. 00-256
Federal-State Joint Board on Universal Service	CC Docket No. 96-45
Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation	CC Docket No. 98-77
Prescribing the Authorized Rate of Return For Interstate Services of Local Exchange Carriers	CC Docket No. 98-166

COMMENTS OF THE STATE OF ALASKA
ON PETITIONS FOR RECONSIDERATION

In these comments, the State of Alaska presents its views on a petition for reconsideration filed by the Rural Consumer Choice Coalition ("RCCC"). This group asserts that the decision of the Commission not to reduce interstate access charges of small rural telephone companies to match the level of access charges of some larger telephone companies will frustrate accomplishment of the legal requirements for rate integration and geographic rate averaging. Although the State does not take any position on whether the relief requested should be granted, it strongly opposes the contention that action is necessary to protect these legal requirements.

Background

On November 3, 2001, the Federal Communications Commission released its Second Report and Order regarding the Multi-Association Group (MAG) plan. That order reforms the interstate access charges of relatively small local telephone companies operating exclusively in rural areas. [1]

AT&T and others have contended in this proceeding that the Commission needs to take steps to address the disparity between comparatively high interstate access charges levied by the small rural telephone companies and the lower interstate access charges levied by larger telephone companies serving rural and urban areas. Specifically, they asked the FCC to create an explicit universal service fund that would be used to reduce the interstate access charges levied by small rural telephone companies to 0.95 cents per minute.[2]

If this relief is not granted, AT&T and others argued, nationwide long distance carriers will either (1) to charge higher long distance prices in areas served by rural telephone companies or (2) to abandon service in those areas. Because

---

1 *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Second Report And Order And Further Notice Of Proposed Rulemaking*, CC Docket No. 00-256, FCC 01-304 (rel. Nov, 3, 2001) *("Second Report and Order")*.

The interstate access charges of these carriers are established by the Commission by use of a traditional "rate of return" approach, as compared to the "price cap" approach used to establish interstate access charges of larger local exchange carriers whose service areas may encompass both urban and rural areas.

2 *See* AT&T Comments, CC Docket No. 00-256, at 1, 6-7 (Feb. 26, 2001).

these carriers are forbidden to charge more for long distance services in rural areas than they charge in other areas they serve,[3] these carriers would eventually stop serving high-cost rural areas.

In its Second Report and Order, the Commission took steps to reduce the disparity in interstate access charges in different areas. It reduced per minute access charges levied by small rural telephone companies by eliminating the carrier common line charge (a per minute access charge), and replacing it with an increase in the subscriber line charge (a fixed monthly charge).[4] The Commission concluded that, even if this change did not result in access charges of 0.95 cents per minute, this action would be sufficient to reduce pressures on long distance companies not to comply with the legal requirements for geographic rate averaging and rate integration. It rejected the argument by AT&T and others that a new explicit universal service fund should be created to fund reductions in interstate access charges to the 0.95 cent level:

> In addition, the proposal advocated by AT&T and others effectively would eliminate rate disparities by replacing the implicit support for toll rate averaging and rate integration provided for under section 254(g) with explicit universal service funding. It is unclear whether section 254, read as a whole, directs the Commission to make explicit the support for toll rate averaging and rate integration provided for under section 254(g). Moreover, the Commission must strike a fair and

---

3 47 U.S.C. § 254(g); 47 C.F.R.§ 64.1801. These requirements are called geographic rate averaging and rate integration.

4 *Second Report and Order* at ¶ 64. ("Eliminating the CCL charge also will facilitate compliance with geographic rate averaging and rate integration requirements by interexchange carriers, and encourage interexchange carriers to compete for long distance customers in rural areas.")

> reasonable balance among all of the goals and principles of the Act, including both competitive and universal service goals. In this regard, the AT&T proposal is inconsistent with principles of cost-based pricing and, therefore, presents the danger of distorting competition. We also are concerned that the AT&T plan may lead to excessive universal service funding, which "may itself violate the sufficiency requirements of the Act." Finally, ***based on our examination of the record, we are not persuaded that adoption of the AT&T plan is necessary to ensure the continued ability of carriers like AT&T to comply with section 254(g). The steps we take should lessen AT&T's concern and will hold down the cost of universal service.***[5]

On or about December 28, 2001, several entities asked the Commission to reconsider its *Second Report and Order*. In these comments, the State of Alaska addresses the reconsideration petition filed by the RCCC, a group comprised of AT&T, General Communication, Inc. and Western Wireless.[6]

This group is once again asking the Commission to reduce small local telephone companies' interstate access charges to 0.95 cents per minute. It also repeats the request that the Commission create an explicit universal service fund to defray the economic losses rural local telephone companies would incur from reducing access prices to this level.[7] Much of its argument is that this action is required to prevent Congress' requirements (and the Commission policies) of rate integration and geographic rate averaging from being frustrated. Without further steps, it alleges, long distance carriers operating in rural areas with high access

---

5 *Second Report and Order*, at ¶ 89 (emphasis added).

6 These comments are timely filed pursuant to the notice published in the Federal Register on January 31, 2002.

7 Rural Consumer Choice Coalition Petition for Reconsideration, at 1-16 (Dec. 28, 2001) ("*Petition*").

charges will exit those markets and others will not enter.[8] Indeed, it goes so far as to suggest that nationwide long distance companies (such as AT&T) will be forced to cut themselves up into pieces with separate unaffiliated companies each serving different areas of the country.[9]

The State of Alaska offers no view on whether the relief requested in the RCCC's petition should be granted. The State strongly believes, however, that the argument that the requested relief is essential to preserve (or not to frustrate) rate integration and geographic rate averaging is without merit. Grant of the petition, therefore, would need to be based on one or more other rationales.

The Requested Relief Is Not Necessary to Preserve <u>Geographic Rate Averaging and Rate Integration.</u>

The argument that the requested relief is necessary if the requirements of rate integration and geographic rate averaging are not to be frustrated (because long distance carriers would leave rural areas) should be rejected for several reasons.

<u>First</u>, there is no legal support for this argument. Geographic rate averaging and rate integration are the law of the land. Unless and until these requirements are lifted, all providers of interexchange service must comply with them. The fact that access charges in some areas of the nation are higher than in other areas does not justify any lessening of the commitment to these requirements, nor does the

---

8 *Id.* at 6-7.

9 *Id.* at 10-11.

emergence of regional carriers such as the RBOCs.[10] It must be assumed that, when Congress enacted the geographic rate averaging and rate integration requirements, it did so with full knowledge of both the disparity in access charges and the other provisions of the Telecommunications Act it was enacting that would allow RBOCs to offer long distance service.[11] The RCCC cannot successfully argue that Congress intended for geographic rate averaging and rate integration to fall by the wayside in the current environment.

Second, although the RCCC bemoans the alleged access cost differential nationwide long distance suffer as compared to other long distance companies that may not serve areas with high access charges, it ignores the fact that long distance carriers incur many other types of costs in providing their services. For example, the RCCC points to an exhibit showing that, after the *Second Report and Order*, access charges for different hypothetical companies range from approximately 1.3 cents per minute to approximately 3.1 cents per minute. These access costs comprise anywhere from 18.5% to 43.9% of a hypothetical retail price of 7 cents per minute.[12] Quite obviously, there are many other costs that comprise a majority of the costs long distance carriers incur.

Third, indeed, while the access costs nationwide carriers incur may be higher than those incurred by some regional carriers, the RCCC ignores offsetting benefits

---

10 *See id.* at 5.

11 47 U.S.C. §§ 271-72.

12 *Petition,* at 7 and Exhibit C(2).

that accrue to the nationwide carriers. And nationwide carriers would lose these benefits if they cease serving the entire nation. For example, nationwide carriers control their own network and therefore can design that network to meet their own needs with respect to the specific services they offer and the quality of service their customers receive. Use of their own networks provides nationwide facilities-based carriers a significant cost advantage over competitors who must lease or resell the capacity of others. Other cost advantages accrue from the use of nationwide advertising. Marketing and research and development costs can be allocated over a larger customer base than that available to smaller regional competitors.

There can be no serious question that nationwide companies are effective competitors nationwide on both a cost and quality basis. With respect to costs, AT&T has repeatedly advised the investment community that it has the largest gross margins of any long distance company.[13] Indeed, in a conference call on January 30, 2002, the CEO of AT&T Corp. (Michael Armstrong) stated that AT&T's Consumer business generated margins "at least three times its nearest

---

13 *See also* AT&T Press Release, "AT&T Announces Fourth-Quarter Earnings" (Jan. 30, 2002) ("The company said AT&T Consumer continues to produce industry-leading margins.") (found at http://www.att.com/press/item/0,1354,4191,00.html); AT&T Press Release, "AT&T Earns 4 Cents Per Share from Continuing Operations, Excluding Other Income" (Oct. 23, 2001) (AT&T Chairman Armstrong states that "we . . .delivered solid cash flow and industry-leading margins in our Consumer unit") (found at http://www.att.com/press/item/0,1354,4051,00.html).

competitor."[14] The RCCC's arguments that nationwide long distance companies operate at an insurmountable disadvantage, therefore, are baseless.

Fourth, perhaps because nationwide long distance carriers have offsetting advantages, there is no real-world support for the assertion that these carriers will either stop serving rural areas with relatively high access charges or will mutate into separate and unaffiliated regional companies. Rate integration and geographic rate averaging have been fundamental policies of the Commission for decades. Congress then codified and expanded upon these requirements when it adopted the Telecommunications Act of 1996. Six years later, none of the primary facilities-based nationwide long distance carriers has withdrawn service from areas with relatively high interstate access charges while continuing to serve other areas. And certainly none has torn itself into pieces to try to avoid these requirements. [15]

Fifth, the RCCC points to evidence that some relatively small carriers (apparently resellers) make certain rates available only in limited parts of certain states.[16] If these carriers are violating the geographic rate averaging or rate

---

14 AT&T Group Earnings Commentary, Remarks of Michael Armstrong. (An audio replay of the conference can be found at http://www.att.com/ir/.) *See also id.*, Remarks of David Dorman, President of AT&T.

15 In fact, real world actions confirm that nationwide carriers believe there are efficiencies from national operations and they want to take advantage of those efficiencies. *See* AT&T, Petition for Elimination of Conditions, CC Docket No. 00-46, filed March 10, 2000, at ii, 1, 3, 18 (grant of petition which would combine AT&T and AT&T Alascom would create efficiencies and cost savings).

16 *Petition* at 5 and Exhibit B.

integration requirements of the Communications Act or FCC regulations, the appropriate step is to start an enforcement proceeding, not to contend that the requirements of geographic rate averaging or rate integration are at risk.

Conclusion

The State of Alaska requests that the Commission take action consistent with these comments.

Respectfully submitted,

Robert M. Halperin

Robert M. Halperin
CROWELL & MORING LLP
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
202/624-2543

Attorneys for the State of Alaska

Of Counsel:

John W. Katz, Esquire
Special Counsel to the Governor
Director, State-Federal Relations
Office of the State of Alaska
Suite 336
444 North Capitol Street, N.W.
Washington, D.C. 20001

Date: February 14, 2002

1881136

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments of the State of Alaska on Petitions for Reconsideration in CC Docket No. 00-256 were served this 14th day of February 2002, by electronic mail and/or first class mail to the following:

Chairman Michael Powell
Federal Communications Commission
445 12th Street, S.W., Room 8-B201
Washington, DC 20554

Commissioner Kathleen Q. Abernathy
Federal Communications Commission
445 12th Street, S.W., Room 8-A204
Washington, DC 20554

Commissioner Kevin J. Martin
Federal Communications Commission
445 12th Street, S.W., Room 8-C302
Washington, DC 20554

Commissioner Michael J. Copps
Federal Communications Commission
445 12th Street, S.W., Room 8-A302
Washington, DC 20554

John T. Nakahata
Timothy J. Simeone
Harris, Wiltshire & Grannis LLP
1200 Eighteenth Street, N.W.
Washington, DC 20036

Counsel for Rural Consumer Choice Coalition

Gerard J. Duffy
Blooston, Mordkofsky, Dickens, Duffy & Prendergast
2120 L Street, N.W., Suite 300
Washington, DC 20037

Counsel for The Western Alliance

Richard D. Coit, General Counsel*
South Dakota Telecommunications Association
P.O. Box 57
Pierre, SD 57501

Benjamin H. Dickens, Jr.
Mary J. Sisak
Douglas W. Everette
Blooston, Mordkofsky, Dickens, Duffy & Prendergast
2120 L Street, N.W., Suite 300
Washington, DC 20037

Counsel for South Dakota Telecommunications Association

Lisa M. Zaina
Wallman Strategic Consulting, LLC
1300 Connecticut Avenue, N.W., Suite 1000
Washington, DC 20036

Stephen G. Kraskin*
Sylvia Lesse
Kraskin, Lesse & Cosson, LLP
2120 L Street, N.W., Suite 520
Washington, DC 20037

Counsel for Alliance of Independent Rural Telephone Companies

John F. Jones*
Vice President, Federal Government Relations
CenturyTel, Inc.
100 Century Park Drive
Monroe, Louisiana 71203

Karen Brinkmann
Richard R. Cameron
Latham & Watkins
Suite 1000
555 Eleventh Street, N.W.
Washington, DC 20004-1304

Counsel for CenturyTel, Inc.

Richard A. Askoff*
Regina McNeil
National Exchange Carrier Association, Inc.
80 South Jefferson Rd.
Whippany, NJ 07981

Counsel for National Exchange Carrier Association, Inc., National Rural Telecom Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, and the United States Telecom Association

Michele C. Farquhar
David L. Sieradzki
Ronnie London
Hogan & Hartson LLP
555 13th Street, N.W.
Washington, DC 20004

Counsel for Competitive Universal Service Coalition

Lisa M. Zaina
Wallman Strategic Consulting, LLC
1300 Connecticut Avenue, N.W.
Suite 1000
Washington, DC 20036

Counsel for Plains Rural Independent Companies

L. Marie Guillory*
Daniel Mitchell
National Telephone Cooperative Association
4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203

Counsel for National Telephone Cooperative Association

Qualex International, Portals II
445 12th Street, S.W., Room CY-B402
Washington, DC 20554

Sharon M. Davis

Sharon M. Davis

* Indicates by first-class mail